

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-adoption Statement of Reasons)

Amend Section 502

Title 14, California Code of Regulations

Re: Waterfowl, Migratory; American Coot; and Common Moorhen (Common Gallinule)

- I. Date of Initial Statement of Reasons: May 18, 2006
Date of Pre-adoption Statement of Reasons: August 7, 2006
 - II. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: June 23, 2006
Location: Mammoth Lakes
 - (b) Discussion Hearing: Date: August 3-4, 2006
Location: Sacramento
 - (c) Adoption Hearing: Date: August 24, 2006
Location: Santa Barbara
 - III. Description of Modification of Originally Proposed Language of Initial Statement of Reasons:

The originally proposed language contained a range of season lengths and daily bag limits which are modified to identify specific season lengths and daily bag limits. Two of these changes are outside the range of either bag limit or season length originally specified: 1) the bag limit for Large Canada geese in the Balance of State and Southern San Joaquin Valley zones is recommended to be 4 rather than 3; and 2) the season length in the Southern San Joaquin Valley zone is recommended to be 102 days rather than 100 days. Extending and splitting the duck season into two parts in the Southern San Joaquin Valley Zone requires changes to falconry regulations in that Zone, changing the species allowed from 3/day of any species to ducks only. Similarly, the proposed regulation to allow hunting for Small Canada geese in the North Coast Special Management Area for 107 days creates a conflict with Federal frameworks for falconry and because the North Coast Special Management Area is within the Balance of State Zone, falconry regulations in the North Coast Special Management Area are proposed to change to set separate seasons in that area for ducks and geese. Additionally the areas open for Small Canada geese in the North Coast Special Management Area late season hunt are now specified to be on private lands only in regulation.
 - IV. Reasons for Modification of Originally Proposed Language of Initial Statement of

Reasons:

The originally proposed regulatory language contained a range of season lengths and daily bag limits which were contingent upon the establishment of Federal framework regulations. These frameworks were established by the U.S. Fish and Wildlife Service in late July and now specify the maximum season lengths and daily bag limits. In addition, five changes from the Initial Statement of Reasons are included in response to recommendations from the public which were; 1) outside the ranges specified (but still within the Federal frameworks); 2) to clarify the open areas for the Late Season hunt for Small Canada geese; 3) and to propose falconry regulations in the Southern San Joaquin Valley Zone and the North Coast Special Management Area within the Balance of State Zone consistent with the Federal frameworks which constrain the hunting of any species by all methods of take to no more than 107 days. Existing regulations include daily bag limits of 3/day for falconry, however the recommendation for a split season for ducks in the Southern San Joaquin Valley Zone, and the original proposed falconry regulation would have resulted in hunting for geese and ducks in excess of 107 days. Similarly, the proposal to hunt Small Canada geese in the North Coast Special Management Area for 107 days creates a similar problem in the Balance of State Zone.

V. Summary of Public Recommendations and Primary Considerations Raised in Opposition and in Support received prior to August 7, 2006:

- (a) Description of Proposed Action by Public: Recommends banning spinning-wing (moto-duck, robo-duck) decoys.

Proposal Source:

Virginia Handley, Animal Switchboard, CA (testimony 6/23/06)

Mel McKinney, Little River, CA (email 2/7/06)

Recommendation: Reject.

Analysis: The Commission addressed this issue in 2002. Currently, biological information is not sufficient to conclude that it is necessary to regulate this method of take beyond the existing regulation.

- (b) Description of Proposed Action by Public: Recommends a split waterfowl season in the Southern San Joaquin Valley Zone that opens prior to October 21 and again the first part of November.

Proposal Source: Arthur Spalding, Wasco, CA (testimony 6/23/06)

Recommendation: Accept.

Analysis: An earlier opening date, with a split season, will result in the provision of more flooded habitat for migratory birds, including waterfowl, for a longer period of time. There will be a slight reduction in public hunting opportunity on Kern National Wildlife Refuge because water

deliveries to this area are lower in late September and early October and fewer acres are normally flooded on that National Wildlife Refuge in early October. Additionally, splitting the duck season in the Southern San Joaquin Valley Zone would require a change in the proposed language for falconry in this Zone because as proposed, in combination with a split season, more than 107 days of hunting would occur in violation of Federal guidelines.

- (c) Description of Proposed Action by Public: Recommends the Black Brant season be increased to 30-days and occur from November 10 through December 9.

Proposal Source: Ted Romo, Eureka, CA
(letter with 77 signatures on petition received 7/14/06 and testimony 8/3/06)

Recommendation: Accept with modification.

Analysis: The Federal frameworks allow the Black Brant season to be increased to 30 days in response to an improvement in their population level and consistent with the Management Plan for this population. The Department is recommending a 30 day season that begins on the first Saturday in November (November 4) in the Northern Brant Special Management Area. Brant seasons were moved from February to November in 1983 in an effort to increase the number of Black Brant that occur in California in January as measured by the Midwinter Waterfowl Survey. During the late 1970s and early 1980s virtually no Brant were detected in California during this survey; with the switch to the fall season, winter counts have slowly increased. The season dates were changed to November 10 to December 9 in 1998 and winter counts of Black Brant at Humboldt Bay declined for 5 years following that small change in season dates. Flyway management plan goals include a distributional objective of 10,000 Black Brant in California, including 5,000 in Humboldt Bay, 3,000 in Tomales Bay, and 2,000 in Morro Bay. Current indices are at or near the goal for Morro Bay, about 50% of goal in Tomales Bay, but only about 25% of goal in Humboldt Bay. A start-date on a Saturday, rather than a fixed date, will maximize hunting opportunities on Humboldt Bay, the primary hunting area in the Northern Brant Special Management Area, where hunting on the water in the Bay is restricted to weekends and Wednesdays.

- (d) Description of Proposed Action by Public: Recommends the Department increase the Large Canada goose daily bag limit to 4 in the Balance of State zone and the Southern San Joaquin Valley zones.

Proposal Source: Bob McLandress, California Waterfowl Association, Sacramento, CA (letter dated 7/24/06)

Recommendation: Accept.

Analysis: The majority of Large Canada geese that occur in these zones are resident birds, mostly the result of natural range expansion. Many urban areas in these zones are experiencing nuisance problems from Large Canada geese, and to the extent that these birds leave urban areas in the fall, the very slight increase in harvest expected to result from an increase from 3/day to 4/day will help to alleviate the nuisance problem by reducing the number of geese very slightly. Further, with the increase in goose bag limits for other geese in these zones, the regulations will be simplified to be a total of 4 geese per day. The proposal is revised to increase the daily bag limit of Large Canada geese in these zones from 3/day to 4/day.

- (e) Description of Proposed Action by Public: Recommends that the waterfowl season in the Northeastern California Zone begin October 14.

Proposal Source: Gary Robeson, Cal-Ore Wetlands and Waterfowl Council, CA (letter dated 7/27/06)

Recommendation: Reject.

Analysis: The season dates in the Northeastern Zone are traditionally earlier than other zones in California because waterfowl migrated into this area earlier in the year. Additionally, previous public comment has recommended that this season open concurrently with the adjacent zones in Oregon, which will open on October 7.

- (f) Description of Proposed Action by Public: Recommends that the mallard limit be 5/day with 1 hen.

Proposal Source: Gary Robeson, Cal-Ore Wetlands and Waterfowl Council, CA (letter dated 7/27/06)

Recommendation: Reject.

Analysis: Population levels of mallards are above average and good recruitment is expected due to the wet spring in 2006. Estimates of breeding mallards in California in 2006 were up 26% compared to 2005 and are 7% above their long-term average. Mallards that originate in California comprise a majority of the mallard harvest in California. Surveys of mallards in the mid-continent region, where the bulk of the remaining mallards that winter in California originate, were similar to both last year and the long-term average. Bag limit changes at the upper levels (e.g. changing from 7 to 5) will not reduce harvest by a measurable level because nearly all hunters do not achieve the daily bag limit during each day's hunt. A bag limit reduction of 50% for hens will reduce hen harvest, but it is unknown if this level of decrease, when male mallards constitute the majority of the mallard harvest, will necessarily result in an improved mallard population in subsequent years.

- (g) Description of Proposed Action by Public: Recommends that the pintail

limit be 2/day with no hens allowed.

Proposal Source: Gary Robeson, Cal-Ore Wetlands and Waterfowl Council, CA (letter dated 7/27/06)

Recommendation: Reject.

Analysis: Population levels of pintails increased significantly in 2006, however the Federal frameworks allow only 1 pintail per day. The U.S. Fish and Wildlife Service developed a harvest strategy for pintails that specifies pintail daily bag limits. Many ducks are similarly colored in early fall, and pintail hens look very similar to hens of other species. As a result, if the take of female pintails were prohibited, inadvertent violations would likely result, with little or no biological impact to the pintail population. This is because male pintails already comprise about 80% of the pintail harvest with a 1-bird daily bag.

- (h) Description of Proposed Action by Public: Recommends that the duck season be 105 days in the Northeastern Zone.

Proposal Source: Gary Robeson, Cal-Ore Wetlands and Waterfowl Council, CA (letter dated 7/27/06)

Recommendation: Accept.

Analysis: This season length fits within the Federal frameworks and is the Department's recommendation.

- (i) Description of Proposed Action by Public: Supports the late season for Aleutian Canada geese in the North Coast Special Management area and the need to close public areas to provide an alternate habitat for the geese during the late season.

Proposal Source:
Walter L. Mansell, California Rifle and Pistol Association, Fullerton, CA (letter dated 7/25/06 and testimony 8/3/06)
Blake Alexander, Aleutian Goose Working Group, Crescent City, CA (letter dated 6/13/06)

Recommendation: Accept.

Analysis: This season length fits within the Federal frameworks and is the Department's recommendation. The proposal is revised to stipulate a closure of public lands during the late season hunt. Additionally, this proposal necessitates a change in Balance of State Zone falconry regulations to comply with Federal regulations that permit no more than 107 days of hunting, by any method, for each species of migratory game bird.

- (j) Description of Proposed Action by Public: Recommends that the daily bag limit for mallards be 7/day.

Proposal Source: Kurt Baer, Citrus Heights, CA (email dated 8/1/06)

Recommendation: Accept.

Analysis: This bag limit is within the Federal frameworks and is the Department's recommendation. Additional analysis is provided in response to comment (f) above.

- (k) Description of Proposed Action by Public: Recommends that the duck season in the Southern San Joaquin Valley Zone occur from October 7 through October 29 and from November 11 through January 28.

Proposal Source: Bill Gaines, California Outdoor Heritage Alliance, Sacramento, CA (testimony 8/3/06)

Recommendation: Accept.

Analysis: This is more specific but consistent with recommendation (b) above; see that recommendation for analysis. The proposal regulations are revised to increase the maximum duck season length in this zone from 100 to 102 days. Additionally, splitting the duck season in the Southern San Joaquin Valley Zone would require a change in the proposed language for falconry in this Zone because as proposed, in combination with a split season, more than 107 days of hunting would occur in violation of Federal guidelines.

- (l) Description of Proposed Action by Public: Recommends that the Black Brant season in the Balance of State Black Brant Special Management Area be 30 days in length beginning on the second Sunday in November.

Proposal Source: Fred Harpster, Morro Bay, CA (testimony 8/3/06)

Recommendation: Accept.

Analysis: See analysis in recommendation (c) above.

- (m) Description of Proposed Action by Public: Recommends a complete ban on all waterfowl hunting in Morro Bay.

Proposal Source: Mandy Davis, Morro Bay, CA (testimony 8/3/06)

Recommendation: Reject.

Analysis: Current regulations provide for reduced-shooting hours (later morning start times) and a substantial hunting closure area in Morro Bay.

The limited amount of hunting in Morro Bay is consistent with the conservation of wildlife and the provision of recreational opportunity.

- (n) Description of Proposed Action by Public: Recommends longer falconry seasons and increased daily bag limits.

Proposal Source: Thomas Stephan, California Raptor Awareness Group
NO ADDRESS (email 12/26/05)

Recommendation: Reject.

Analysis: The Migratory Bird Treaty Act and Federal regulations stipulate that hunting by all methods for any species can not exceed 107 days. Current Federal frameworks allow up to 107 days for hunting with guns (the general season). In order to provide days for falconry-hunting only, regular seasons would have to be shortened. There are approximately 45,000 gun hunters in California, compared to far less than 1,000 individuals permitted to use falconry. Federal frameworks also restrict the take of birds by falconry to 3/day; the proposed regulations include this maximum daily bag limit as allowed under the Federal rules.

- (o) Description of Proposed Action by Public: Recommends that the Southern California zone waterfowl regulations are as liberal as allowed under the Federal frameworks, that duck seasons conclude on the last Sunday in January.

Proposal Source:
Victor M. Carrillo, Chair, Imperial County Board of Supervisors, El Centro CA (letter dated 6/20/06)
Mike Maier, Desert Pacific Wetland Alliance, Pasadena, CA (letter dated 6/7/06)

Recommendation: Accept.

Analysis: This season timing and length fits within the Federal frameworks and is the Department's recommendation.

- (p) Description of Proposed Action by Public: Recommends that archery hunting for waterfowl be prohibited.

Proposal Source: Virginia Handley, Animal Switchboard, CA (testimony 6/23/06)

Recommendation: Reject.

Analysis: Archery hunting is an approved method of take in both the Federal frameworks and the existing regulations. No evidence is presented that there is a biological impact to populations from this method of take.

- (q) Description of Proposed Action by Public: Recommends changing the name and description of the South Humboldt Bay Closure area.

Proposal Source: Bill Gaines, California Outdoor Heritage Alliance, Sacramento, CA (facsimile received 8/7/06)

Recommendation: Reject.

Analysis: The South Humboldt Bay Closure area was implemented in 1980 to discourage pass shooting of Black Brant as they fly into South Humboldt Bay from the ocean. Unacceptably high crippling rates of Black Brant were documented from this hunting practice. The proposal to change the name from South Humboldt Bay Closure to "West South Jetty Dune and Beach Closure" is unnecessary because this is the first such comment in 25 years and has caused no confusion to the Department's knowledge and the closure area is well known by the limited number of Black Brant hunters. The proposal to change the precise definition of the closure area to a general one ("dunes and beaches to the West of South Jetty Road") is incomplete as it does not describe a north or south end to the closure area. An incomplete closure area definition would be difficult to enforce.

Updated Informative Digest/Policy Statement Overview

Current regulations in Section 502, Title 14, California Code of Regulations (CCR), provide definitions, hunting zone descriptions, season opening and closing dates, and establish daily bag and possession limits. In addition to the six proposals contained herein, the U.S. Fish and Wildlife Service (Service), after analysis of waterfowl population survey and other data, may also initiate changes in Federal regulations which will require changes in existing and proposed regulations in California. Changes in Federal regulations for season opening and closing dates, elimination or creation of special management areas, season length, and daily bag limits for migratory birds may occur. Five (items 1 through 5) of the six proposed changes to state regulations require changes in the Federal regulations. These proposals must be approved by the Pacific Flyway Council at their meeting on July 19, 2006. The Service will consider these and other recommendations at their meeting on July 26-27, 2006. Item 6 (including the table) below proposes a range of season dates and bag limits for waterfowl. At this time, the California Breeding Pair Survey has not been conducted and the Service has not established Federal regulation "frameworks" which occurs in late July after the analysis of current waterfowl population survey, other data, input from the Flyway Councils and the public. Also, minor editorial changes were made to clarify and simplify the regulations and to comply with existing Federal frameworks.

The Department's proposals are as follows:

1. Modify the existing boundary in the Northeastern Zone to include Shasta Valley in the Northeastern Zone.

The U.S. Fish and Wildlife Service approved this change.

2. Increase the Small Canada goose season length in the North Coast Special Management Area to 107 days, (split the Small Canada goose season into 2 segments) and allow hunting for Small Canada geese from February 24 until March 10.

The U.S. Fish and Wildlife Service approved this change.

3. Increase the white-fronted goose daily bag limit to either 3 or 4 in the Northeastern Zone. An increase to 4 is contingent upon a spring hunt in Oregon.

The U.S. Fish and Wildlife Service approved a 4/day limit for white-fronted geese in the Northeastern Zone.

4. Increase the white-fronted goose daily bag limit to 4 in the Southern San Joaquin Valley and Balance of State zones, contingent upon a spring hunt in Oregon.

The U.S. Fish and Wildlife Service approved this change.

5. Increase the black brant season length to 30 days.

The U.S. Fish and Wildlife Service approved this change.

6. Provide a range of waterfowl hunting season lengths (which may be split into two segments) between 38 and 107 days for all hunting methods. A range of daily bag limits is also given for ducks in all zones and geese in the Northeastern California, Southern San Joaquin Valley, Southern California, Balance of State, and Colorado River zones. Also, Federal regulations require that California's hunting regulations conform to those of Arizona in the Colorado River Zone. See the following table for season and bag limit ranges.

The following table has been amended from the version in the Initial Statement of Reasons to reflect the Department's regulation recommendations consistent with the Federal frameworks as established July 31, 2006. Federal frameworks allow general duck seasons to be as long as 107 days in the Pacific Flyway with a 7-bird daily duck bag limit (including Mallards); that the pintail and canvasback seasons could be as long as the general duck season with a 1-bird bag limit; and that other proposals from California (see above) were accepted. The Department recommends a 7 bird daily bag limits for Mallards, however a range from 5-7 in total and a range of 1-2 hen Mallards is maintained in the summary table to provide flexibility to the Commission in response to public comment on this particular issue.

In response to public recommendations, five changes from the Initial Statement are incorporated herein relative to season length and bag limits. 1) In the Balance of State and Southern San Joaquin Valley zones, the original recommendation was a daily bag limit of 3 Large Canada geese and the revised proposal is for a 4-bird daily bag limit of Large Canada geese in these zones. 2) In the Southern San Joaquin Valley Zone, the original recommendation was for a duck season of between 38 and 100 days; the revised proposal increases the length of duck season in that Zone to 102 days. 3) The proposal to split the duck season in the Southern San Joaquin Valley Zone in combination with the proposed regulations for falconry hunting in that Zone, would result in hunting in excess of the 107 days allowed under Federal frameworks; the proposal is amended to recommend falconry hunting for ducks only. 4) The proposal for 107 days of hunting for Small Canada geese in the North Coast Special Management in combination with the proposed regulation for falconry in the Balance of State Zone (the North Coast Special Management Area is within the Balance of State Zone) causes a conflict with Federal falconry regulations, and falconry regulations are proposed to change in the North Coast Special Management Area to provide separate limits and seasons for ducks and geese taken by falconry in the Special Management Area. 5) The original proposal included a recommendation for a Late Season (February 24 – March 10) hunt for Small Canada geese in the North Coast Special Management Area to address depredation problems on private lands. The proposal is revised to stipulate that hunting during this late season can occur only on private lands.

AREA	SPECIES	SEASONS	DAILY BAG & POSSESSION LIMITS
Statewide	Coots & Moorhens	Concurrent w/duck season	25/day. 25 in possession
Northeastern Zone	Ducks	Oct 7 - Jan 19	7/day, 5-7 mallards, 1-2 hen mallards, 1 pintail, 1 canvasback, 2 redheads, 3 scaup. Possession limit double the daily bag.
	Geese	Oct 7 - Jan 14	4/ day, up to 4 white geese, up to 4 white-fronts, up to 2 Large Canada geese, only 1 Small Canada goose. Possession limit double the daily bag.
Southern San Joaquin Valley Zone	Ducks	Oct 7 - Oct 29 and Nov 11 - Jan 28	7/day, 5-7 mallards, 1-2 hen mallards, 1 pintail, 1 canvasback, 2 redheads, 3 scaup. Possession limit double the daily bag.
	Geese	Oct 21 - Jan 28	4/ day, up to 4 white geese, up to 4 white-fronts, up to 4 Large Canada geese, up to 4 Small Canada geese. Possession limit double the daily bag.
Colorado River Zone	Ducks	Oct 20 - Jan 28	7/day, 5-7 mallards, 1-2 hen mallards or Mexican-like ducks, 1 pintail, 1 canvasback, 2 redheads, 3 scaup. Possession limit double the daily bag.
	Geese	Oct 20 - Jan 28	6/ day, up to 4 white geese, up to 3 dark geese. Possession limit double the daily bag.
Southern California Zone	Ducks	Oct 21 - Jan 28	7/day, 5-7 mallards, 1-2 hen mallards, 1 pintail, 1 canvasback, 2 redheads, 3 scaup. Possession limit double the daily bag.
	Geese	Oct 21 - Jan 28	5/day, up to 4 white geese, up to 3 dark geese. Possession limit double the daily bag.
Balance of State Zone	Ducks	Oct 21 - Jan 28	7/day, 5-7 mallards, 1-2 hen mallards, 1 pintail, 1 canvasback, 2 redheads, 3 scaup. Possession limit double the daily bag.
	Geese	Oct 21 - Jan 28	4/ day, up to 4 white geese, up to 4 white-fronts, up to 4 Large Canada geese, up to 4 Small Canada geese. Possession limit double the daily bag.
SPECIAL AREA REGULATIONS	SPECIES	SEASON	DAILY BAG & POSSESSION LIMITS
North Coast	All Canada Geese	Oct 31 - Jan 28 and Feb 24 - Mar 10, except for Large Canada geese which are closed after the last Sunday in January. Only private lands are open to hunting during any season beyond the last Sunday in January.	4/day, only 1 may be a Large Canada goose. Possession limit double the daily bag.
South Humboldt Bay	All species	Closed during brant season	
Sacramento Valley (West)	White-fronted geese	Closed after Dec 14	2/day. Possession limit double the daily bag.
Morro Bay	All species	Open in designated areas only	
Martis Creek Lake	All species	Closed until Nov 16	
Northern Brant	Black Brant	Nov 4 - Dec 3	2/day. Possession limit double the daily bag.
Balance of State Brant	Black Brant	Nov 11 - Dec 10	2/day. Possession limit double the daily bag.
YOUTH HUNTING DAYS	SPECIES	SEASON	DAILY BAG & POSSESSION LIMITS
Northeastern Zone	Same as regular season	The Saturday fourteen days before the opening of waterfowl season extending for 2 days.	Same as regular season
Southern San Joaquin Valley Zone		The Saturday following the closing of waterfowl season extending for 2 days.	
Southern California Zone		The Saturday following the closing of waterfowl season extending for 2 days.	
Colorado River Zone		The Saturday following the closing for waterfowl season.	
Balance of State Zone		The Saturday following the closing of waterfowl season extending for 2 days.	

FALCONRY TAKE OF DUCKS	SPECIES	SEASON	DAILY BAG & POSSESSION LIMITS
Northeastern Zone	Same as regular season	Oct 7 – Jan 19	3/ day, possession limit 6
Balance of State Zone	Same as regular season.	Oct 21 – Feb 4	
North Coast Special Management Area	Ducks	Oct 21 – Feb 4	
	Geese	Concurrent with Small Canada goose season. See 502(d)(5)(D)1	
Southern San Joaquin Valley Zone	Ducks only	Concurrent with duck season and Jan 29-31	
Southern California Zone	Same as regular season	Oct 21 – Feb 4	
Colorado River Zone	Ducks only	Oct 20 – Feb 2	